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## EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

## Case Law Bulletin

Week of June 5, 2017



### IN FOCUS: [Sessions v. Morales-Santana](#)

#### Supreme Court of the United States

[Sessions v. Morales-Santana](#), No. 15-1191, 2017 WL 2507339 (2017) (USC)

The Supreme Court affirmed the judgment of the Second Circuit in part and reversed in part, concluding that section 309(c) of the Act—providing an exception to the general physical presence requirements so that the child of an unwed United States citizen mother may acquire citizenship at birth even if the child’s mother had only been “physically present in the United States or one of its outlying possessions for a continuous period of one year”—violates the Equal Protection Clause. The Court held that (1) the distinction between unwed fathers (309(a)) and mothers (309(c)) is unconstitutional as a violation of equal protection and (2) that the remedy is that the general rule under section 301(a)(7) of the Act should apply “prospectively, to children born to unwed U.S. citizen mothers.”

#### Third Circuit

[Israil v. Sessions](#), No. 16-1431, 2017 WL 2480580 (3d Cir. June 8, 2017) (unpublished) (WH/CAT)

The Third Circuit granted the PFR, concluding that petitioner succeeded in proving a likelihood of future persecution and that relocation to a different area of Pakistan was unreasonable in light of his family’s constant moves from the Taliban.

#### Fourth Circuit

[Payan Jaquez v. Sessions](#), No. 16-1147, 2017 WL 2467084 (4th Cir. June 8, 2017) (Conviction Definition)

The Fourth Circuit denied the PFR of a Board order, concluding that the alien’s guilty plea to possession of cocaine, for which he received a deferred adjudication under Virginia Code § 18.2-251, falls within the unambiguous definition of a conviction in section 101(a)(48)(A) of the Act. The alien entered a guilty plea and was placed on probation (amongst other punishments) and thus met both requirements necessary to fall within the definition of a conviction.

#### Fifth Circuit

[United States v. Rico-Mejia](#), No. 16-50022, 2017 WL 2371741 (5th Cir. June 1, 2017) (USSG-COV)

The Fifth Circuit granted the petition for panel rehearing and withdrew its prior panel opinion. The court held that that an Arkansas conviction for first-degree terroristic threatening (Ark. Code Ann. § 5-13-301(a)(1)(A)) cannot constitute a crime of violence under U.S.S.G. § 2L1.2(b)(1)(A)(ii) because it lacks physical force as an element.

[Hernandez-Lopez v. Sessions](#), No. 15-60809, 2017 WL 2458917 (5th Cir. June 6, 2017) (unpublished) (Asylum-PSG)

The Fifth Circuit denied the PFR, concluding that petitioner’s claimed particular social group—women subject to violence in Guatemala—lacked particularity and social distinction.

#### Seventh Circuit

[Douglas v. United States](#), No. 17-1104, 2017 WL 2413442 (7th Cir. June 5, 2017) (ACCA-COV)

The Seventh Circuit affirmed the district court’s decision, concluding that the defendant’s prior Indiana Class C felony convictions for battery resulting in serious bodily injury (Ind. Code § 35-42-2-1(a)) constituted “crimes of violence” under the ACCA’s elements clause (18 U.S.C. § 924(e)(2)(B)(i)).

[Garcia v. Sessions](#), No. 16-3234, 2017 WL 2471266 (7th Cir. June 8, 2017) (Reinstatement; Asylum)

The Seventh Circuit dismissed the PFR, concluding that the petitioner, who is subject to reinstatement of removal under **section 241(a)(5) of the Act**, cannot apply for asylum.

#### Ninth Circuit

[Harutyunyan v. Sessions](#), No. 13-71606, 2017 WL 2445079 (9th Cir. June 6, 2017) (unpublished) (ACF; Corroboration)

The Ninth Circuit granted the PFR, concluding that the Board’s reliance on three non-corroboration-related grounds to affirm the IJ’s ACF was in error since

petitioners were not provided with the opportunity to explain a discrepancy, the IJ did not explain why she rejected petitioners explanation for that discrepancy and because there was no finding that petitioner knew or should have known a document that was being submitted was counterfeit. The Ninth Circuit reversed and remanded to provide these opportunities to petitioner.

[Ramirez-Contreras v. Sessions](#), No. 14-70452, 2017 WL 2469422 (9th Cir. June 8, 2017) (CIMT)

The Ninth Circuit granted the PFR, concluding that the Cal. Veh. Code § 2800.2 (fleeing from a police officer) is not categorically a CIMT. The statute is overbroad because, in considering the minimum conduct involved, a conviction could simply rest upon “eluding police while committing three non-dangerous traffic violations,” which cannot meet the generic definition of moral turpitude. The court also found the statute to be indivisible and remanded for consideration of petitioner’s COR application.

[Ortiz-Ortiz v. Sessions](#), No. 14-73863, 2017 WL 2493534 (9th Cir. June 9, 2017) (unpublished) (ACF; Due Process)

The Ninth Circuit granted the PFR, holding that the ACF was not supported by substantial evidence and concluding that the IJ’s failure to ask about petitioner’s claimed incidents of harm constituted a violation of her due process rights.

#### Eleventh Circuit

[Wei Tao Liu v. U.S. Att’y Gen.](#), No. 16-15251, 2017 WL 2378189 (11th Cir. June 1, 2017) (unpublished) (ACF)

The Eleventh Circuit granted the PFR and remanded to the Board for further proceedings. The court concluded that it was error for the IJ and the Board to base an ACF on the alien’s “failure to mention without prompting that, after he came to the United States, his brother had suffered similar persecution in China.” The court noted that the IJ’s assumptions regarding the omission were based on speculation and were not supported by the record.

[Radido v. U.S. Att’y Gen.](#), No. 16-10653, 2017 WL 2422860 (11th Cir. June 5, 2017) (unpublished) (Board Review)

The Eleventh Circuit granted the PFR and vacated the Board’s order because it did not address or acknowledge the alien’s argument that the IJ “erred by failing to consider the supplemental materials he had filed.”